UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

STATION CASINOS, INC., ALIANTE GAMING, LLC, d/b/a ALIANTE STATION CASINO + HOTEL, BOULDER STATION, INC., d/b/a BOULDER STATION HOTEL & CASINO, PALACE STATION HOTEL & CASINO, INC., d/b/a PALACE STATION **HOTEL & CASINO, CHARLESTON** STATION, LLC, d/b/a RED ROCK CASINO RESORT SPA, SANTA FE STATION, INC., d/b/a SANTA FE STATION HOTEL & CASINO, SUNSET STATION, INC., d/b/a SUNSET STATION HOTEL & CASINO, TEXAS STATION, LLC, d/b/a TEXAS STATION GAMBLING HALL & HOTEL, LAKE MEAD STATION, INC., d/b/a FIESTA HENDERSON CASINO HOTEL, FIESTA STATION, INC., d/b/a FIESTA CASINO HOTEL, and GREEN VALLEY RANCH GAMING, LLC, d/b/a GREEN VALLEY RANCH RESORT SPA CASINO, a single Employer

and

Cases 28-CA-023436 28-CA-062437

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS, CULINARY WORKERS UNION, LOCAL 226 AND BARTENDERS UNION LOCAL 165, affiliated with UNITE HERE, AFL-CIO

ACTING GENERAL COUNSEL'S REPLY BRIEF

TO: Lester A. Heltzer, Executive Secretary
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ACTING GENERAL COUNSEL'S REPLY BRIEF

Pursuant to Section 102.46(h) of the Board's Rules and Regulations, Counsel for the Acting General Counsel (General Counsel) files this Reply Brief to Respondent's Answering Brief to General Counsel's Cross-Exceptions to the Decision (ALJD) of Administrative Law Judge Gerald M. Etchingham (ALJ) in the captioned case.

I. Introduction

In its Answering Brief, Respondent makes numerous disingenuous assertions about the General Counsel's representations contained in its Brief-in-Support of Cross-Exceptions. (RAB 2, 3)¹ Contrary to Respondent's assertions, the facts and arguments set forth in the General Counsel's Brief are supported by the record. Facts have not been omitted or exaggerated in an effort to mislead the Board or to shed the General Counsel's arguments in a more favorable light.

II. Argument

Respondent's Assertion that the General Counsel's "Facts" are Unsupported by the Record Evidence is Incorrect

In its Answering Brief to the General Counsel's Brief-in-Support of Cross-Exceptions, Respondent devotes over one page to addressing the General Counsel's inclusion of so-called "unsupported facts" and the convenient omission of actual facts. Such claims are incorrect as the General Counsel's factual representations are indeed supported by the record.

Respondent first takes issue with the General Counsel's inclusion of the following passage in the fact section of its Brief-in-Support of Cross-Exceptions:

In his [Rubio] role as Relief Supervisor, employees notified him when calling out sick and <u>appear to have generally complied with his instructions</u>. (Emphasis added to section in dispute)

According to Respondent, the General Counsel's representation that Team Member's generally complied with Martin Rubio's (Rubio) instructions when he served in the capacity of Relief Supervisor is "unsupported by the record and constitutes pure speculation." (RAB 2)

RAB ____ refers to Respondent's Answering Brief to General Counsel's Cross-Exceptions followed by the page number. General Counsel's exhibits are shown as GCX followed by the exhibit number and exhibit page, if applicable. Transcript references are (Tr.__:_) showing the transcript page and line, if applicable. ALJD__ refers to JD-(SF)-05-12 issued by the ALJ on February 2, 2012, followed by the page number.

Despite Respondent's assertion, the inclusion of this language is supported by the record and the reasonable inferences that can be drawn from it. For example, there is no dispute that when serving as a Relief Supervisor, Rubio completed schedules of where team members were stationed, assigned part-time team members to tasks that needed to be completed and, when necessary, even assigned team members to perform tasks that went beyond their typical assignments. (ALJD at 8) Rubio repeatedly testified that when an incident took place in the area of an employee who was on break, he would radio the employee assigned in the adjacent area and they would respond to his call. (Tr. 84:19-25; 85:1-12; 120:5-22) When asked if employees had ever "refused to go to the area" when he requested them to do so, Rubio's unhesitatingly responded "no." (Tr. 85:13-15) Moreover, the assignment sheets distributed by Rubio to employees with their daily tasks indicate that employees completed their assignments which he handed out. (GCX 9, 10)

Next, Respondent contends that the General Counsel "conveniently" omitted facts when he noted that Rubio wore a different uniform from the employees he oversaw. While Respondent does not dispute the truth of the General Counsel's assertion, it declares that the General Counsel – presumably in an attempt to mislead the Board – intentionally failed "to note that Relief Supervisors wear different uniforms which distinguish them from statutory supervisors. (RAB 2) Respondent's claim regarding the intentions of the General Counsel is mistaken and unfounded.

In the factual findings contained within his Decision, the ALJ made the following observation:

As a graveyard supervisor, Rubio was the highest-ranking, on-site employee in the internal management department. (Tr. 111, 163.) However, Rubio was not in charge of the casino's entire operations, the pit boss was in charge; and Rubio received instruction from and reported issues to him. (Tr.

111, 130, 153-54.) <u>Nonetheless, Rubio wore a different uniform (e.g., a polo shirt) than the porters (e.g., a Station Casinos t-shirt)......</u> (Emphasis added)

(ALJD 8:29-33)

Notwithstanding the ALJ's failure to reference the same so called "facts" which Respondent contents the General Counsel "conveniently omitted," Respondent did not take exception to this portion of the ALJ's factual findings. The ALJ's factual findings and his failure to find that Relief Supervisors wear different uniforms which distinguish them from "statutory supervisors," may be premised on the fact that, contrary to Respondent's argument, the record lacks sufficient clarity to make such a conclusion. For example, while Respondent cites pages 98 through 99 of the transcript to support its contention that Relief Supervisors wore different uniforms than "statutory supervisors," a reading of the relevant transcript pages only serve to establish that *Rubio* wore a different uniform when he served in the capacity of a Relief Supervisor than when he worked as a Porter, evidenced by the following portions of the transcript:

- Q Okay. So what uniform do you wear as a porter, if any?
- A A polo shirt.
- Q A polo shirt? Now, do you wear the same thing as a supervisor?
- A No.
- Q What do you wear as a supervisor?
- A That's what I'm saying, as a supervisor is a polo shirt.
- Q Okay. So what do you wear as a porter?
- A It's a regular Station Casino shirt.
- Q Okay. Is there any other difference to what you are required to wear?
- A Yes, it's different.
- Q Is there any other difference other than the shirts? Is there any other difference between what you wear as a porter and what you wear as a supervisor?
- A No, it's different.
- Q Just the shirt?
- A It's the shirt.

(Tr. 98:20-25; 99:1-12; Rubio)

Similarly, when questioning employee Casiano Corpus (Corpus), Respondent repeatedly referred to Corpus as "Mr. Rubio," an error that confused Corpus and consequently clouded the record. For example, in questioning Corpus, Respondent asked him if *he* wore a different uniform from his statutory supervisor, Ron Grannis (Grannis). (Tr. 164:15-25). In response to Corpus's reply in the affirmative, Respondent inquired whether Relief Supervisor's wore the same uniform worn by *him* (Corpus). (Tr. 165:1-5) Such testimony fails to establish that Relief Supervisors and "statutory supervisors" wear different uniforms. Rather it serves to establish, as noted in the General Counsel Brief, that Relief Supervisors and employees wear different uniforms. Below is an excerpt of the transcript cited by Respondent:

- Q Okay. And was Mr. Rubio your supervisor, strike that. Okay. Do you ever, okay. Do you wear a uniform there at work?
- A Yes, sir.
- Q Okay. And is it the same as your supervisor, Ron Granniss?
- A No. sir.
- Q How is it different?
- A 'Cause the uniforms, it was just a regular shirt, with a Palace Station logo.
- Q Whose?
- A Supervisor.
- Q Now when you have a relief supervisor, do they wear the same uniform, do they wear the same uniform as you?
- A No, sir.
- Q What kind of uniform do they wear?
- A Supervisor uniform, sir.

MS. LIPKIN: Your Honor, may we confer with General Counsel for just a moment?

JUDGE ETCHINGHAM: Sure.

(Tr. 164:15-25; 165:1-5; Corpus)

While Corpus did testify that Grannis, wore a uniform different from Rubio, he also testified that Rubio wore an identification badge or "tag" which identified him as an "Internal Maintenance Supervisor." (Tr. 185:6-19) This testimony only establishes that Rubio and

Grannis wore different uniforms; not, as Respondent contends, that "statutory supervisors" wore different uniforms from Relief Supervisors. In fact, the record evidence is limited to the differences between the uniforms worn by Rubio and Grannis, not Rubio and "statutory supervisors." Acceptance of Respondent's argument would require one to speculate that all statutory supervisors, regardless of their department or responsibilities, wear the same uniform. Such a leap cannot be made from the evidence presented in the record.

III. Conclusion

Respondent's Answering Brief to General Counsel's Cross-Exceptions, as discussed above and in the General Counsel Brief in Support of Cross-Exception, lacks merit and is not supported by the record. It is respectfully requested that the Board grant the General Counsel's exceptions and otherwise affirm the decision of the ALJ.

Dated Las Vegas, Nevada, this 12th day of April 2012.

Respectfully submitted,

/s/ Pablo A. Godoy

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CERTIFICATE OF SERVICE

I hereby certify that the **ACTING GENERAL COUNSEL'S REPLY BRIEF** in Cases 28-CA-023436 and 28-CA-062437, was served via E-Gov, E-Filing, and electronic mail, on this 12th day of April 2012, on the following:

Via E-Gov, E-Filing:

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